IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7637 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PUNAM MAGAN KOLI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7637 of 2001

MR MH RATHOD for Petitioner No. 1

MR SP SEN ASSTT GOVERNMENT PLEADER for Respondents No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 24/10/2001

ORAL JUDGEMENT

#. Rule. Mr.S.P.Sen, learned AGP appearing on behalf of

the respondents waives service of rule. Heard Mr.Mehul Rathod, learned advocate appearing on behalf of the petitioner and Mr.S.P.Sen, learned AGP for respondents State Authorities.

#. The brief facts of the present petition are as under :-

According to the petitioner prior to 1953 the father of the petitioner late Shri Magan Koli was cultivating the land situated at Meda, Taluka Deeesa, being Survey No.63 [old Survey No.60] admeasuring acres 4 and guntha 17. That said Shri Magan Koli - father of the petitioner gave various applications to the concerned authorities from time to time for granting the land in question by way of regularisation as Shri Magan Koli was in possession of the said land and was cultivating said land since long. According to the petitioner, the father of the petitioner has also invested huge amount for making the land fertile for cultivation. It is also case of the petitioner that said Magan Koli also deposited the fine imposed by the concerned authority for cultivating the land without obtaining any permission. On 15-8-1974 the Talati submitted report showing the actual position of the land in question and thereafter efforts are made by the father of petitioner for granting the land in question. Even the copy of the Form 7 / 12 show that the petitioner is in possession and is cultivating the said land. Therefore, on 5-9-1994 the petitioner applied to the Collector, Banaskantha for granting the land in question as the petitioner's father was in possession of the land in question since 1953. On 13-1-1995 the Circle Inspector, Zerda personally visited the site verification of the land in question and submitted a report that the land in question is encroached since last 20 years by the petitioner and accordingly Panchnama was made which specifies the actual position of the land in question. On 15-3-1995 on the basis of the site verification and the Panchnama of the Circle Inspector, Zerda, a check list which is necessary for regularisation of the encroachment made on the Government land was filed, wherein also it is specifically mentioned that there is no objection if the land in question is regularised in favour of the petitioner. However, during the pendency of the application for regularisation, the Mamlatdar, Deesa passed order dated 20-7-1995 in case No. Land / Encroachment / 7 / 95 rejecting the request of the petitioner for granting the land in question and the petitioner was directed to pay the fine of Rs.775/- for the period from 1950-60 to 1994-95 and further directed to remove the encroachment. The petitioner deposited the

fine as per the order of the Mamlatdar. However, according to the petitioner, on the basis of the application dated 28-7-1992 of the villagers, the petitioner preferred application to the Collector, Banaskantha for granting the land by way of regularisation as the petitioner's father was in possession of the said land since 1953. However, the Collector, Banaskantha passed vide his order dated 15-7-1996 rejected the request of the petitioner for regularisation mainly on the ground that since long time, the petitioner is not in possession of the land in question as per the records maintained by the authority. Thereafter the petitioner has approached the Special Secretary [Appeals] by way of Revision Application No.16 / 1997 challenging the order of the Collector. However, the Special Secretary [Appeals] rejected the revision application on 9-5-2001 preferred by the petitioner and confirmed the order passed by the Collector, Banaskantha without considering the contentions and documentary evidence on record. Therefore, the present petition is filed challenging the order passed by the Special Secretary [Appeals].

#. Learned advocate Mr.Rathod appearing on behalf of the petitioner has submitted that the view taken by the Collector as well as the Special Secretary is contrary to the record. The possession over the land in question by the father of the petitioner has been established from the record in report submitted by the Mamlatdar, Deesa. However, the said report is produced on record of this petition as Annexure-F, wherein the possession of the land in question though by way of encroachment has been established from the year 1959-60 upto 1994-95. Mr.Rathod, learned advocate has also submitted that there is another evidence of check list which is also very well on record and further submitted that this check list has been prepared by the authority, wherein as per Item No.3 sub clause [3], it is specifically observed that the petitioner has invested amount of Rs.10,000/- to Rs.12,000/- and possession of the petitioner by way of encroachment from more than 25 years is clearly shown. Similarly, in item No.6 sub clause [5] at pg.25 also, there is specific mention to the effect that the encroachment is very old and in case if the encroachment is required to be removed, which will ultimately cause hardship to the petitioner. Therefore, request was made by the Mamlatdar, Deesa that the petitioner is having possession over the land in dispute since long time by way of encroachment. That the petitioner is belonging to scheduled caste - Koli community and the petitioner is prepared to pay market price of the land in question and

therefore, the Mamlatdar, Deesa has recommended for regularisation of the possession of the present petitioner. Mr.Rathod, learned advocate has also submitted that while passing the orders by the Collector on 15th July, 1996 pg.30, the Collector has considered only Pani Patrak and come to conclusion that possession of the petitioner is not noted in Pani Patrak and there was no record which justified continued and long possession of the petitioner. Similarly, this aspect has been taken into account by Special Secretary and ultimately come to the conclusion that even in Village Form No.7 & 12, which is not available and only possession of the petitioner is found in village Form 7 / 12 in the year 1995 - 96 and there was no continued old possession of the petitioner upon the land in question. Therefore, the decision taken by the Collector needs to be rectified.

#. Learned AGP Mr.S.P.Sen appearing on behalf of the respondent authorities has submitted that the Collector has considered the copy of the Pani Patrak and there was no record available with the Collector to establish the continued long possession of the petitioner and therefore, in absence of the documentary evidence, the decision which has been taken by the Collector as well as Special Secretary, Revenue Department is right and no error has been committed by neither of the authority and therefore, interference of this Court is not called for.

#. I have considered the submissions made by learned advocates for the parties. Looking to the record placed before this Court, the orders passed by the Collector as well as Special Secretary apparently are contrary to the record and illegal inasmuch as the report which has been submitted by the Mamlatdar dated 20th July, 1995, wherein possession of Punmabhai Maganbhai Koli in respect of Survey No.63 admeasuring Acres 4 - 17 gunthas has been clearly mentioned. It has also come on record that Punmabhai having possession over the land in question by way of encroachment from the year 1959 - 60 upto 1995-96. Not only this, the amount of fine which was imposed by the Mamlatdar, has also been deposited by the petitioner. The second document relied upon by the petitioner is check list, which has been prepared for regularisation of the land in question wherein according to the details submitted by the concerned authority - Mamlatdar, Deesa in Item 3[3], the possession of the land in question has been considered as 25 years old and it is also observed that the petitioner has also invested Rs.10,000/- to Rs.12,000/-. Similarly, according to item No.6[5], possession by way of encroachment has been considered to

be old and it is also observed that in case if the encroachment is required to be removed, then there would be hardship on the family of the petitioner. In light of these details submitted by the Mamlatdar, Deesa in the check list, recommendations were made by the Mamlatdar, Deesa in favour of the petitioner to the effect that the petitioner is having encroachment upon the land in question since long back and moreover, the petitioner belongs to Scheduled Caste community and the petitioner is prepared to pay the market price of the land in question. Thus, in clear words recommendations were made by the Mamlatdar, Deesa to regularise the land in question in favour of the petitioner. In light of this documentary evidence by the officer of the concerned authority, view taken by the Collector apparently seems to be contrary to the record and the Collector seems to have grossly ignored the relevant reports submitted by the lower authorities. Therefore, in my opinion, the order passed by the Collector, Banaskantha dated 15th July, 1996 and the subsequent order dated 9th May, 2001 passed by the revisional authority are required to be quashed and set aside.

#. In view of above discussion, present petition succeeds. The order passed by the Collector, Banaskantha dated 15th July, 1996 and the order passed by the Special Secretary dated 9th May, 2001 are hereby quashed and set aside. It is directed to the petitioner to approach the District Collector, Banaskantha by way of detailed representation with prayer to regularise the land in question which is in possession of the petitioner since long, within one month from today. Simultaneously, as and when the Collector, Banaskantha - the respondent No.2 herein receives such representation from the petitioner, it is directed to the respondent No.2 to consider sympathetically and pass appropriate orders in accordance with law considering all the relevant records and aspects referred by this Court in this order, within two months thereafter and communicate the decision to the petitioner immediately. However, it is made clear that in case of any adverse order, if at all passed by the respondent, in such event, it is always open for the petitioner to

with law. It is further directed to the respondents that during the pendency of the decision in respect of such representation which will be filed by the petitioner as directed above, the possession of the petitioner will not be disturbed by the respondents till the decision is taken by the respondent No.2. Rule is made absolute to the aforesaid extent. Direct Service is permitted.

Date : 24-10-2001 [H.K.Rathod, J.]

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